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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; and
ACTING ADMINISTRATOR,
NEW JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

ROBERT E. JOHNSON, individually, and
as a Partner trading as South Brunswick
Asphalt; SOUTH BRUNSWICK
ASHPALT, a Limited Partnership;
THOMAS NICOL ASPHALT
COMPANY, INC.; THOMAS NICOL
COMPANY, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY

DOCKET NO. OCN-L-2576-02

Civil Action

CONSENT JUDGMENT

This matter was opened to the Court by Robert Lougy, Acting Attorney General of New Jersey, Kimberly A. Hahn, Deputy Attorney General appearing, attorney for plaintiffs New Jersey Department of Environmental Protection (“DEP”) and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “the Plaintiffs”), and the Law

Office of Edward F. Bezdecki, Esq., Edward Bezdecki, Esq., appearing, as attorney for defendants Robert E. Johnson (“Johnson”) and South Brunswick Asphalt (“SBA”), and Archer & Greiner, P.C., Debra Rosen, Esq., appearing, attorney for defendants Thomas Nicol Asphalt Company, Inc. (“TNA”) and Thomas Nicol Company, Inc. (“TNI”) (collectively referred to as “the Nicols”). Johnson, SBA, TNA, TNI and the Plaintiffs (collectively “the Parties”) have amicably resolved their dispute before trial as follows:

I. BACKGROUND

A. The Plaintiffs initiated this action on August 1, 2002, by filing a Complaint against Johnson, SBA, TNI and TNA (hereinafter collectively referred to as “Settling Defendants”), pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (“the Spill Act”).

B. Plaintiffs, in their Complaint, seek reimbursement of the costs they have incurred, and will incur, to investigate and remediate the Nicol Site, including damages for any natural resource of this State that has been, or may be, injured by the alleged discharge of hazardous substances at and from the Nicol Property as well as injunctive and other relief.

C. The Settling Defendants subsequently filed timely responsive pleadings in which they denied liability and asserted various defenses, claims and third-party claims to the allegations contained in the Plaintiffs’ Complaint and any responsive pleadings filed in this Action.

D. By entering into this Consent Judgment, the Settling Defendants do not admit to any liability arising from the transactions or occurrences alleged in the Complaint filed in this Action.

E. The Plaintiffs allege, and the Settling Defendants deny, that “hazardous substances,” as defined in N.J.S.A. 58:10-23.1 lb., have been “discharged” at the Nicol Property within the

meaning of N.J.S.A. 58:10-23.11b.

F. The Plaintiffs further allege, and the Settling Defendants deny, that “hazardous substances,” as defined in N.J.S.A. 58:10-23.1 lb., were “not satisfactorily stored or contained” at the Nicol Property within the meaning of N.J.S.A. 58:10-23.11 f.b(2).

G. In or about the summer of 1987, residences in the Pine Lake Park subdivision of Manchester Township (hereinafter “Pine Lake Park”), located in the vicinity of the Nicol Property, had their potable wells tested in conjunction with real estate transactions. The analysis of the well samples demonstrated the presence of hazardous substances including carbon tetrachloride, trichloroethene, 1,1,1 trichloroethane, and 1,1 dichloroethene, methylene chloride and tetrachloroethylene.

H. From July 1987 through September 1988, the Ocean County Health Department sampled the potable wells of residences in Pine Lake Park, the results of which also indicated the presence of the hazardous substances 1,1,1 trichloroethane, 1,1-dichloroethylene, trichloroethylene, carbon tetrachloride, methylene chloride, and tetrachloroethylene.

I. From September 1987 through 1988, plaintiff DEP conducted an investigation of the Nicol Property that included soil sampling, the installation and sampling of onsite monitoring wells and visual inspection of the property. A subsequent investigation of the Nicol Property was conducted on behalf of the New Jersey Department of Transportation as part of a Declaration of Taking on a portion of the Nicol Property for the widening of State Highway 37.

J. Sampling results from these investigations revealed the presence of various hazardous substances in the ground water and soils at the Nicol Property, which substances included 1,1,1 trichloroethane, benzene, toluene, 1,1 dichloroethylene, 1,1, dichloroethane and trichloroethylene.

K. On August 22, 1988, DEP issued Spill Act Directive and Notice to Insurers Number One (“August 1988 Directive One”) to the Settling Defendants and others pursuant to N.J.S.A. 58:10-23.11 f.a., directing them to pay \$86,331.68 to fund the DEP’s investigation of the Nicol Site. Nicol made the payment to DEP in compliance with the August 1988 Directive One.

L. On December 9, 1988, DEP issued Spill Act Directive and Notice to Insurers Number Two (“December 1988 Directive”) to the Settling Defendants and others, pursuant to N.J.S.A. 58:10-23.11f.a., directing them to pay \$46,597.00 to fund further hydrogeologic investigation of the Nicol Site. No payment has been made as was directed in the December 1988 Directive.

M. In May 1989, the Manchester Township Municipal Utilities Authority and Manchester Township filed claims against the Spill Fund for reimbursement of the costs associated with connecting all homes in Pine Lake Park to a municipal water system. More than 1,000 homeowners in Pine Lake Park also submitted claims to the Spill Fund for damages allegedly associated with the ground water contamination in Pine Lake Park.

N. In February 1990, DEP again collected samples from 11 monitoring wells at the Nicol Property, the analysis of which revealed the presence of various hazardous substances, including, benzene, 1,1 dichloroethane, 1,1,1 trichloroethane and trichloroethylene.

O. On June 26, 1990, DEP issued Spill Act Directive Number Three (“June 1990 Directive Three”) to the Settling Defendants and others pursuant to N.J.S.A. 58:10-23.11 f.a., directing them to pay \$245,000.00 to fund remedial measures to be undertaken by the New Jersey Department of Transportation (“DOT”) in conjunction with DOT’s taking of a portion of the Nicol Property as a right of way to widen Route 37. Plaintiffs alleged that none of the named respondents complied with the June 1990 Directive Three.

P. On May 29, 1992, DEP issued Spill Act Directive and Notice to Insurers Number

Four (“May 1992 Directive Four”) to the Settling Defendants and others pursuant to N.J.S.A. 58:10-23.11 f.a., directing them to pay \$20,357,217.51 to fund the cleanup and removal of hazardous substances discharged at the Nicol Property. No payment has been made as was directed in the May 1992 Directive Four.

Q. On May 13, 1999, DEP issued a Spill Act Directive and Notice to Insurers Number Five (“May 1999 Directive Five”) to the Settling Defendants and others to erect a fence to restrict access to an onsite coal tar-sand mixture located on the Nicol Property. None of the Settling Defendants complied with the May 1999 Directive Five; however, the fence was erected by Davies Consultants, Inc., (“Davies”), which, at the time, was the prospective purchaser of the Nicol Property.

R. In 2002, Davies entered into a Memorandum of Agreement and Prospective Purchaser Agreement (“PPA”) with the DEP, which requires Davies to complete any necessary investigation and remediation for the Nicol Site.

S. Davies subsequently obtained extensions of time from plaintiff DEP to complete the remediation of the Nicol Site and, pursuant to the PPA and its extensions, as well as the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -30, remains obligated to complete the remediation of the Nicol Site.

T. In 2006, Davies, a developer, took title to the Nicol Property.

U. Plaintiff DEP has incurred, and may continue to incur, costs as a result of the discharge and unsatisfactory storage or containment of hazardous substances at the Nicol Property.

V. Plaintiff Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund concerning Pine Lake Park and the Nicol Site, and, further,

has approved, and may continue to approve, other appropriations for the Nicol Site.

W. The Plaintiffs allege to also have incurred, and that they will continue to incur, damages, including lost value and reasonable assessment costs, for any natural resource and natural resource service of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Nicol Property.

X. The Plaintiffs allege that the costs and damages the Plaintiffs have incurred, and will incur, for the Nicol Site are “cleanup and removal costs” pursuant to N.J.S.A. 58:10-23.1 lb.

Y. Nicol alleges, pursuant to a settlement agreement and release signed by Nicol and its representatives on June 5, 2001, that they have fully released and agreed to hold harmless the Insurance Carriers (as defined herein) for all claims related to the Nicol Site, excluding only those claims related to the May 1992 Directive Four.

Z. The Parties to this Consent Judgment recognize, and this Court by entering this Consent Judgment finds, that the parties to this Consent Judgment have negotiated this Consent Judgment in good faith and in settlement of a bona fide dispute; that the implementation of this Consent Judgment will expedite the remediation of the Nicol Site, and will allow the parties to this Consent Judgment to avoid continued, prolonged and complicated litigation; and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED:**

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act. This Court also has personal jurisdiction over the Parties, solely for the purposes of implementing this Consent Judgment and resolving the underlying litigation.

2. The Parties waive all objections and defenses they may have to the jurisdiction of this Court, or to venue in this County solely for the purposes of implementing and enforcing this Consent Judgment and resolving the underlying litigation. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

III. PARTIES BOUND

3. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendants.

IV. DEFINITIONS

4. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act, or in the regulations promulgated under the Spill Act, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

“Consent Judgment” shall mean this Consent Judgment.

“Day” shall mean a calendar day unless expressly stated to be a working day.

“Working day” shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next working day.

“Future Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, that the Plaintiffs will incur after the effective date of this Consent Judgment, to investigate and remediate the Nicol Site.

“Interest” shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

“Insurance Carriers” means all those entities listed on Exhibit A and all of their past,

present and future direct and indirect parents, and subsidiaries, all of their respective predecessors, successors, divisions, reinsurers, and all directors, officers, employees, principals, partners, members, agents, assigns, administrators, attorneys, and other representatives of any of them.

“Johnson” and “SBA” shall mean Robert Eugene Johnson and South Brunswick Asphalt, all of their officers, directors, employees, predecessors, parents, successors, subsidiaries, partners, limited partners, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity (“Related Entity”), but only to the extent that the alleged liability of any Related Entity is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Nicol Site arose independently of its status and capacity as a Related Entity of any Settling Defendant.

“Natural Resource Damages,” shall mean all claims arising from discharges at the Nicol Property that occurred prior to the effective date of this Consent Judgment, and that are recoverable by the Plaintiffs as natural resource damages for injuries to ground water under the Spill Act; the Water Pollution Control Act; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 to -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 to -1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 to -9675; or any other state or federal common law, statute, or regulation, and include:

- i. The costs of assessing injury to ground water and groundwater services, plaintiff DEP’s Office of Natural Resource Restoration’s oversight costs determined pursuant to N.J.A.C. 7:26C-4.7, attorney’s fees, consultants and experts’ fees, other litigation costs, and interest, incurred prior to the effective date of this Consent Judgment; and
- ii. Compensation for restoration of, the lost value of, injury to, or destruction of ground

water and groundwater services.

Natural Resource Damages do not include:

- a. Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;
- b. Requirements to clean up any contamination as a result of discharges at the Nicol Property.

“Nicol Property” shall mean property located at 2065 Highway 37, Manchester Township, Ocean County, New Jersey, consisting of approximately 45 acres, this property also being known and designated as Block 44, Lot 15.01, on the Tax Map of Manchester Township.

“Nicol Site” or “the Site” shall mean the Nicol Property and all other areas where any hazardous substance discharged at the Nicol Property allegedly has become located, which plaintiff DEP has designated as Site Remediation Program Interest No. 016764.

“Paragraph” shall mean a portion of this Consent Judgment identified by an arabic numeral or an upper case letter.

"Party" or "Parties" shall mean plaintiff DEP, plaintiff Administrator, and the Settling Defendants.

“Past Cleanup and Removal Costs” shall mean any and all payments made by the Administrator of the Spill Fund and all costs, including direct and indirect costs, the Plaintiffs incurred on or before the effective date of this Consent Judgment, to investigate and remediate the Nicol Site.

“Plaintiffs” shall mean plaintiffs DEP, Administrator, and any successor department, agency or official.

“Section” shall mean a portion of this Consent Judgment identified by a roman numeral.

“Settling Defendant” or “Settling Defendants,” shall mean defendants Johnson, SBA, TNA and TNI.

“TNA” and “TNI” shall mean Thomas Nicol Asphalt Company Inc. and Thomas Nicol Company, Inc., and all of their officers, directors, employees, predecessors, parents, successors, subsidiaries, partners, limited partners, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity (“Related Entities”), but only to the extent that the alleged liability of any Related Entity is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Nicol Site arose independently of its status and capacity as a Related Entity of any Settling Defendant.

V. PARTIES’ OBJECTIVES

5. The Parties’ objectives in entering into this Consent Judgment are to protect public health and safety and the environment by the Settling Defendants agreeing to reimburse the Plaintiffs for their Past Cleanup and Removal Costs, Future Cleanup and Removal Costs, and Natural Resource Damages, and in return for the Plaintiffs agreeing to resolve all of their claims against the Settling Defendants concerning the Nicol Site as stated in the Complaint and this Consent Judgment.

VI. SETTLING DEFENDANTS’ COMMITMENTS

6. Within 60 days of the effective date of this Consent Judgment, the Settling Defendants shall pay the Plaintiffs \$9,510,000 in reimbursement of the Plaintiffs’ Past Cleanup and Removal Costs and Future Cleanup and Removal Costs.

7. The Settling Defendants shall pay the amount specified in Paragraph 6, above, by certified check made payable to: “Treasurer, State of New Jersey.” The Settling Defendants shall mail or otherwise deliver the payment and payment invoice to the Section Chief, Environmental

Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

8. Furthermore, within 60 days of this Consent Judgment being entered, the Settling Defendants shall pay to the Plaintiffs \$500,000 in reimbursement for Natural Resource Damages.

9. The Settling Defendants shall pay the amount specified in Paragraph 8 above by certified check made payable to: "Treasurer, State of New Jersey." The Settling Defendants shall mail or otherwise deliver the payment and any other payment documentation plaintiff DEP requires, to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

VII. PLAINTIFFS' COVENANTS & RELEASE

10. In consideration of the payments the Settling Defendants are making pursuant to Paragraph 6 above, and except as otherwise provided in Paragraphs 17 – 22, below, the Plaintiffs covenant not to further sue or to take administrative action against the Settling Defendants for reimbursement of the Past Cleanup and Removal Costs and Future Cleanup and Removal Costs the Plaintiffs have incurred and will incur, related to the Nicol Site.

11. In further consideration of the payments the Settling Defendants are making pursuant to Paragraph 8, above, and except as otherwise provided in Paragraphs 17 – 22, below, the Plaintiffs fully and forever release, covenant not to sue, and agree not to otherwise take administrative action against the Settling Defendants for any and all of the Plaintiffs' causes of actions for Natural Resource Damages for the Nicol Site.

12. In further consideration of the payments the Settling Defendants are making pursuant to Paragraphs 6 and 8, above, upon entry of this Consent Judgment and without further

application to the Court, the Plaintiffs' complaint against the Settling Defendants is dismissed with prejudice.

13. Upon receipt of the payments the Settling Defendants are making pursuant to Paragraphs 6 and 8, above, and except as otherwise provided in Paragraphs 16 – 22, below, plaintiff Administrator covenants to re-amend the amended first priority lien (Docketed Judgment No. DJ-004161-96) filed against the Nicol Property to reflect the amount paid in reimbursement for Plaintiffs' Past Cleanup and Removal Costs pursuant to Paragraph 6 above. Upon receipt of the payment required in Paragraph 6 above, plaintiff Administrator covenants to promptly file Warrants of Satisfaction with the Clerk of the Superior Court for, the amended non-priority lien (Docketed Judgment No. DJ-61537-90 and amended by Docketed Judgment No. DJ-23722-96) against the revenues and all other real and personal property of Settling Defendants Johnson and SBA and the amended nonpriority lien (Docketed Judgment No. DJ-61533-90 and amended by Docketed Judgment No. DJ-23721-96) against the revenues and all other real and personal property of Settling Defendants TNA and TNI. If title to the Nicol Property shall be transferred back to Settling Defendants TNA or TNI, pursuant to foreclosure proceedings or otherwise, plaintiff Administrator covenants to promptly file a Warrant of Satisfaction with the Clerk of the Superior Court for the amended first priority lien (Docketed Judgment No. DJ-004161-96) filed against the Nicol Property.

14. The covenant and release contained in Paragraphs 10 and 11, above shall take effect upon the Plaintiffs receiving the payments the Settling Defendants are required to make pursuant to Paragraphs 6 and 8, above, in full, and in the prescribed time and manner.

15. The covenant and release contained in Paragraphs 10 and 11, above, are further conditioned upon the Settling Defendants' satisfactory performance of their other obligations

under this Consent Judgment and extend only to the Settling Defendants, and not to any other person.

16. Upon receipt of the payments the Settling Defendants are required to make pursuant to Paragraphs 6 and 8 above, which are being funded chiefly by the Insurance Carriers who have been made subject to the Directives and Notices to Insurers identified above and are the entities listed on Exhibit A attached hereto, Plaintiffs fully and forever release, covenant not to sue, and agree not to otherwise take administrative action against the Insurance Carriers under the May 1992 Directive Number Four.

VIII. PLAINTIFFS' RESERVATIONS

17. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel the Settling Defendants to further remediate the Nicol Site, or to reimburse the Plaintiffs for any additional costs and damages, if, before a Licensed Site Remediation Professional ("LSRP") issues a Response Action Outcome for the Nicol Site:

- i. Plaintiff DEP discovers conditions at the Nicol Site, previously unknown to plaintiff DEP; or
- ii. Plaintiff DEP receives information, previously unknown to plaintiff DEP, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate that the remediation for the Nicol Site is not protective of human health and safety, or the environment.

18. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take

administrative action to compel the Settling Defendants to further remediate the Nicol Site, or to reimburse the Plaintiffs for any additional costs and damages, if after an LSRP issues a Response Action Outcome for the Nicol Site:

- i. Plaintiff DEP discovers conditions at the Site, previously unknown to plaintiff DEP; or
- ii. Plaintiff DEP receives information, previously unknown to plaintiff DEP, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate that the remediation implemented for the Nicol Site is not protective of human health and safety, or the environment.

19. For the purposes of Paragraph 17, above, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date an LSRP issues a remedial action work plan for the Nicol Site.

20. For the purposes of Paragraph 18, above, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date a Response Action Outcome is issued for the Nicol Site.

21. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Nicol Site, or to direct the Settling Defendants to undertake any remediation authorized by law concerning the Nicol Site.

22. The covenant and release contained in Paragraphs 10 and 11, above, do not pertain to any matters other than those expressly stated herein. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendants concerning all other

matters, including the following:

- a. claims based on the Settling Defendants' failure to satisfy any term or provision of this Consent Judgment;
- b. liability arising from the Settling Defendants' past, present or future discharge or unsatisfactory storage or containment of any hazardous substance at a location other than the Nicol Site;
- c. liability for any future discharge or any future unsatisfactory storage or containment of any hazardous substance by the Settling Defendants at the Nicol Property, other than as ordered or approved by plaintiff DEP;
- d. criminal liability; and
- e. liability for any violation by the Settling Defendants of federal or state law that occurs during or after the remediation of the Nicol Site;
- f. liability for any claim pending or filed on or after the effective date of this Consent Judgment against the Spill Fund concerning the Site.

23. The covenants and releases contained in Paragraphs 10 through 13, above, do not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, claims based on the Settling Defendants' failure to satisfy any term or provision of this Consent Judgment.

IX. SETTLING DEFENDANTS' COVENANTS

24. The Settling Defendants covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Plaintiffs notify the Settling Defendants, in writing, that they no longer support entry of the Consent Judgment.

25. The Settling Defendants further covenant, subject to Paragraphs 27 and 28, below,

not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Nicol Site. This covenant shall include the following:

- a. any direct or indirect claim for reimbursement from the Spill Compensation Fund (“Spill Fund”) concerning the Nicol Site; and
- b. any claim or cause of action concerning the remediation of the Nicol Site, including plaintiff DEP’s selection, performance or oversight of the remediation, or plaintiff DEP’s approval of the plans for the remediation.

26. The Settling Defendants' covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 25 above does not apply where the Plaintiffs sue or take administrative action against the Settling Defendants pursuant to Paragraphs 17 through 18, above.

X. SETTLING DEFENDANTS’ RESERVATIONS

27. The Settling Defendants reserve, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall it include any such claim

concerning the Site, including plaintiff DEP's selection and performance of the remediation for the Nicol Site. The foregoing applies only to claims that the Settling Defendants may bring pursuant to any statute other than the Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

28. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k.

XI. FINDINGS & ADMISSIONS OF LIABILITY

29. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendants, or a finding by the Plaintiffs, of any wrongdoing or liability on the Settling Defendants' part for anything the Plaintiffs have actual knowledge of having occurred at the Nicol Site as of the effective date of this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

30. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person or entity not a Party to this Consent Judgment. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

31. Each Settling Defendant expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that each Settling Defendant may have concerning any matter, transaction, or occurrence concerning the Nicol Site against any person not a Party to this Consent Judgment.

32. When entered, this Consent Judgment shall constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to the Settling Defendants from contribution actions. The

Parties agree, and by entering this Consent Judgment this Court finds, the Settling Defendants are entitled, upon fully satisfying their obligations under this Consent Judgment, to protection from contribution actions or claims for matters addressed in this Consent Judgment.

33. In order for the Settling Defendants to obtain protection under N.J.S.A. 58:10-23.11.f.b. from contribution claims concerning the matters addressed in this Consent Judgment, the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on plaintiff DEP's website on _____, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the Nicol Property;
- c. the name of the Settling Defendants; and
- d. A summary of the terms of this Consent Judgment.

34. The Settling Defendants, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom the Plaintiffs had notice as of the date the Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with paragraph 33, above.

35. The Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 53 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraph 33 above, the Plaintiffs receive information that disclose facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

36. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief; recovery of costs and/or damages, or other appropriate relief concerning the

Site, each Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims the Plaintiffs raise in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment; nor does it affect any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or the entire controversy doctrine to the extent such claims or defenses were previously made or available in the Action.

XIII. GENERAL PROVISIONS

37. Site Access. In addition to plaintiff DEP's statutory and regulatory authority to enter and inspect the Nicol Property, to the extent the Settling Defendants have any continuing ownership interest in the Nicol Property, the Settling Defendants shall allow plaintiff DEP and its authorized representatives access to all areas of the Nicol Property to:

- a. remediate the Nicol Site;
- b. assess, restore or replace, or oversee the assessment, restoration or replacement of, any natural resource and natural resource service of this State injured by the discharge of hazardous substances or pollutants at the Nicol Property.

38. The Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Defendants by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

XIV. ACCESS TO INFORMATION

39. Upon receipt of a written request by one or more of the Plaintiffs, any Settling

Defendant shall submit or make available to the Plaintiffs all information the Settling Defendant has concerning the Nicol Site, including technical records and contractual documents.

40. The Settling Defendants may assert a claim of confidentiality or privilege for any information submitted to the Plaintiffs pursuant to this Consent Judgment. The Settling Defendants, however, agree not to assert any privilege or confidentiality claim concerning data related to Nicol Site conditions, sampling, or monitoring.

XV. RETENTION OF RECORDS

41. Each Settling Defendant shall preserve during the pendency of this Consent Judgment and for a minimum of seven years after its effective date, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys, which in any way concern the Site, despite any document retention policy to the contrary.

42. After the seven-year period specified in Paragraph 41, above, any Settling Defendant may request of plaintiff DEP, in writing that it be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receiving written approval from plaintiff DEP, the Settling Defendant may discard only those documents the Plaintiffs do not require the Settling Defendant to preserve for a longer period.

XVI. NOTICES AND SUBMISSIONS

43. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to

the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP & Administrator:

Section Chief
Environmental Enforcement Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
(609) 633-8713

As to Settling Defendant Robert Johnson:

(insert name & address)

As to Settling Defendant South Brunswick Asphalt:

(insert name & address)

As to Settling Defendants Thomas Nicol, Inc. and Thomas Nicol Asphalt Company:

(insert name & address)

44. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

45. The Settling Defendants shall not construe any informal advice, guidance, suggestions, or comments by the Plaintiffs, or by persons acting for them, as relieving the Settling Defendants of their obligation to obtain written approvals or modifications as required by this Consent Judgment.

XVII. EFFECTIVE DATE

46. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XVIII. RETENTION OF JURISDICTION

47. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including any appeal from an administrative determination of a dispute between the parties.

XIX. MODIFICATION

48. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

49. All notices or other documents the Settling Defendants are required to submit to the Plaintiffs under this Consent Judgment shall, upon approval or modification by the Plaintiffs, be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

50. In the event the Plaintiffs approve or modify a portion of a notice or other document any Settling Defendant is required to submit under this Consent Judgment, the approved or modified portion shall be enforceable under this Consent Judgment.

51. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

XX. ENTRY OF THIS CONSENT JUDGMENT

52. The Settling Defendants consent to the entry of this Consent Judgment without further notice.

53. Upon conclusion of the public comment period specified in Paragraph 33, above, the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

54. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXI. SIGNATORIES/SERVICE

55. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

56. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

57. Each Settling Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Defendants agree to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED this

day of ,

J.S.C.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Kevin F. Kratina, Assistant Director
Enforcement and Information Support Element

Dated:

By: _____

Rich Boornazian, Assistant Commissioner
Natural & Historic Resources

Dated:

NEW JERSEY SPILL COMPENSATION FUND

By: _____

Anthony J. Farro, Administrator
New Jersey Spill Compensation Fund

Dated:

ROBERT LOUGY
ACTING ATTORNEY GENERAL OF
NEW JERSEY
Attorney for Plaintiffs

By: _____

Kimberly A. Hahn
Deputy Attorney General

Dated:

THOMAS NICOL COMPANY, INC. and
THOMAS NICOL ASPHALT COMPANY,
INC.

By: _____
Thomas Barry Nicol

Dated:

Person Authorized to Accept Service on Behalf of TNI & TNA.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

ARCHER & GREINER, P.C.

Attorneys for TNI & TNA

By: _____

Debra Rosen, Esq.

Dated:

Person Authorized to Accept Service on Behalf of TNI & TNA.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

JOHNSON AND SBA

Dated:

By: _____

Person Authorized to Accept Service on Behalf of Johnson & SBA.

Name: _____

Title: _____

Address: _____

Telephone No.: _____